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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,560	03/17/2004	Ellen Glassman	SOA-394	5967
23353	7590	07/12/2006		
RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036			EXAMINER YOO, JASSON H	
			ART UNIT 3714	PAPER NUMBER

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,560

Applicant(s)

GLASSMAN ET AL.

Examiner

Jasson Yoo

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-54 is/are pending in the application.
- 4a) Of the above claim(s) 45-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I (claims 28-44), in the reply filed on 5/16/06 is acknowledged. The traversal is on the ground(s) that the Examiner has already searched, issued an office action on the merits, and received a received a substantive response regarding claims sets correspond to the pending claim sets, and therefore it is not a burden on the Examiner. This is not found persuasive because applicant has submitted new claims, wherein claims 28-44 (Invention I) are drawn to comparing the status level of two portable gaming devices with displays, and claims 45-54 (Invention II) are drawn to a authorization right for an event or location. The two inventions are patentably distinct, and are unrelated. In the instant case, invention I is a contest of comparing the status level of a character within a gaming device; wherein the character can be a virtual pet, and the status level is the growth level of the virtual pet. Invention II relates to a portable device that grants access rights to an event; wherein the portable device can be a Radio Frequency Identification badge used for authorization to access a building. Because these inventions are distinct and would require a different field of search, examination of both inventions would be a serious burden on the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The claim limitation of claim 34 has been interpreted to invoke 35 U.S.C. 112, sixth paragraph. The Examiner interprets:

means for associating with a first portable device a first character having a first status level (US 2004/0244050, paragraphs 22, 91, 103-104);

means for detecting a second portable device within a proximity of the first portable device, a second character having a second status level being associated with the second portable device (paragraphs 32, 35-36, 41-50, 52, 93-94, 105-106);

means for comparing a first status level with the second status level (paragraphs 95-96); and

means for displaying on the first portable device a synchronized graphical display involving a contest between the first and second character, with an outcome of the contest being determined based upon the comparison of the first and second status levels (paragraphs 30, 39, 64, 99, 101).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 28-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Sitrick et al. (U.S. Patent No. 6,508,706).

Sitrick discloses the following:

Claim 28, 34, a method for displaying synchronized contests involving characters associated with portable devices, the method comprising:

associating with a first portable device (301 in Fig. 3) a first character (cols. 7:65-8:6) having a first status level (elements of the persona. col. 8:2-56);

detecting a second portable device (302 in Fig. 3) within a proximity of the first portable device (cols. 10:45-57, 11:32-40), a second character having a second status level (elements of the persona. col. 8:2-56) being associated with the second portable device (cols. 7:65-8:6);

comparing a first status level with the second status level (cols. 8:9-12, 9:15-56) ;
and

displaying on the first portable device a synchronized graphical display involving a contest between the first and second character (more specifically, each portable device displays a synchronized graphical display, col. 4:46-58), with an outcome of the contest being determined based upon the comparison of the first and second status levels (col. 11:1-31).

Claims 29, 35, 41, the synchronized graphical display is separately displayable on the second portable device while it is being displayed on the first portable device (each device can provide an active game with an associated display, col. 4:46-58).

Claims 30, 36, 42, a winner of the contest is shown in the synchronized graphical displays, the winner being based upon the comparison of the first and second status levels (comparison of the persona, cols. 8:15-56, 9:15-56).

Claims 31, 37, 43, the first status level is adjusted based upon the outcome of the contest (the persona is modified after an interaction, col. 8:9-12).

Claims 32, 38, a hierarchy module establishes the first status level (persona 210 in Figure 2, cols. 7:65-8:56).

Claims 33, 39, a wireless tag module respectively transmits and receives profile information corresponding to the first and second devices, the profile information accommodating association of the first and second characters with the first and second devices (acoustic interface 134 of Figure 1 transmits and receives profile information, in the form of game rules, and all other communications between all cards 301-307 of Figure 3).

Claim 40, a portable device for displaying synchronized contests involving characters associated with portable devices, the portable device comprising:

a storage module, which stores an association of a first character having a first status level for the portable device (col. 10:32-35);

a detection module, which detects a second portable device within a proximity of the portable device, a second character having a second status level being associated with the second portable device [An RF tag module for transmitting profile information to other devices and for receiving profile information from other devices (131 in Fig. 1). Furthermore, an acoustic interface 134 of Figure 1 transmits and receives profile information, in the form of game rules, and all other communications between all cards 301-307 of Figure 3];

a hierarchy module, which compares the first status level with the second status level (persona 210 in Figure 2, cols. 7:65-8:56);

a display module, which displays on the portable device a synchronized graphical display involving a contest between the first and second characters, with an outcome of the contest being determined based upon the comparison of the first and second status levels (cols. 4:46-58, 10:35-38).

Claim 44, a wireless tag module, which respectively transmits and receives a first profile information and a second profile information corresponding to the portable device and the second portable device, the first profile information and second profile information respectively accommodating association of the first and second characters

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with the portable device and the second portable device. Sitrick et al. disclose an RF tag module for transmitting profile information to other devices and for receiving profile information from other devices (acoustic interface 134 of Figure 1 transmits and receives profile information, in the form of game rules, and all other communications between all cards 301-307 of Figure 3).

Response to Arguments

Applicant's arguments filed 2/10/2006 have been fully considered but they are not persuasive.

Regarding claims 28-44, applicant argued Sitrick does not disclose or suggest, "displaying on the first portable device a synchronized graphical display involving a contest between the first and second characters, which an outcome of the contest being determined based upon the comparison of the first and second status levels" as claimed. As discussed above, Sitrick teach there are multiple portable devices (Fig. 3), and a character associated with each portable device (col. 4:3-7). When a portable device interacts with another portable device (Fig. 3), an outcome of a contest is determined based upon the comparison of the first and second status levels (or elements of persona as described in col. 8:15-56). Cols. 9:15-45 specifically teach an outcome, where a winner wins wealth, wisdom, item, rank, etc; and a winner may lose wealth, health, etc. Furthermore, Sitrick teach each device provides an active game with an associate display (cols. 4:46-57, 11:1-31).

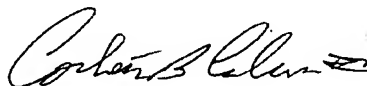
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jasson Yoo whose telephone number is (571)272-5563. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olszewski Robert can be reached on (571)272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JHY



CORBETT B. COBURN
PRIMARY EXAMINER